

**IN THE UNITED STATES DISTRICT COURT
OF THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION**

MARVIN HALL, # 1259577

V.

GUARANTY BOND BANK

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No. 5:05CV24

MEMORANDUM ORDER

The above-entitled and numbered civil action was heretofore referred to United States Magistrate Judge Caroline M. Craven pursuant to 28 U.S.C. § 636. The Report of the Magistrate Judge which contains her proposed findings of fact and recommendations for the disposition of such action has been presented for consideration. Plaintiff filed objections to the Report and Recommendation. The Court conducted a *de novo* review of the Magistrate Judge's findings and conclusions.

FACTUAL BACKGROUND

On January 18, 2005, Marvin Hall ("Plaintiff"), appearing *pro se*, filed this lawsuit against Guaranty Bond Bank ("Defendant"). Plaintiff alleges Defendant was negligent in honoring a check payable to Plaintiff. Specifically, Plaintiff asserts Defendant failed to determine whether Mary Dunlap was authorized to accept funds for Plaintiff or whether Mary Dunlap was authorized to endorse a check in Plaintiff's name.

PROCEDURAL BACKGROUND

On July 13, 2005, the Court ordered Plaintiff to file a brief, within twenty days from the date of entry of the Order, setting forth facts that show that the amount in controversy exceeds \$75,000.00, excluding interest and costs. The Court advised Plaintiff that failure to file a brief within the time prescribed or failure to demonstrate that this Court has jurisdiction over the cause

of action would result in a recommendation that Plaintiff's cause of action be dismissed. On July 19, 2005, Plaintiff filed his brief.

According to Plaintiff, the allegations made the basis of Plaintiff's lawsuit occurred in Mount Pleasant, Texas, which is within the Texarkana Division of the Eastern District of Texas. Plaintiff contends this is the proper venue, and Magistrate Judge Keith Giblin ordered his cause transferred to this division because this Court has jurisdiction over his cause of action. Plaintiff asserts he has shown just cause to hold Defendant negligent in cashing Plaintiff's check on a forged endorsement. Although Plaintiff represented to the Court that the amount in controversy does not exceed \$75,000, Plaintiff argues the check was of greater value to him because it was his sole source of income.

Based on Plaintiff's allegations, the Magistrate Judge found this Court does not have jurisdiction over Plaintiff's cause of action. The Magistrate Judge *sua sponte* recommended Plaintiff's cause of action be dismissed without prejudice. Plaintiff filed a motion for extension of time to file objections to the Report and Recommendation which the Court granted on October 6, 2005. Plaintiff filed objections to the Report and Recommendation on October 24, 2005.

PLAINTIFF'S OBJECTIONS

In his objections, Plaintiff addresses the proper venue for his lawsuit. Plaintiff does not specifically address whether this Court has jurisdiction over his cause of action.

***DE NOVO* REVIEW**

Plaintiff attached to his Complaint a copy of the check allegedly honored by Defendant. The amount of the check is \$1,220.00. Plaintiff has acknowledged that the amount in controversy does not exceed \$75,000. Therefore, as noted by the Magistrate Judge in her Report and

Recommendation dated July 21, 2005, this Court does not have diversity jurisdiction over Plaintiff's cause of action. Moreover, as no violation of a federal statute is plead, the Court does not have federal question over cause of action either.

Plaintiff's objections are without merit. The Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct. Therefore, the Court hereby adopts the Report of the United States Magistrate Judge as the findings and conclusions of this Court. Based on the foregoing, it is

ORDERED that Plaintiff's above-entitled and numbered cause of action is **DISMISSED WITHOUT PREJUDICE**.

SIGNED this 28th day of November, 2005.

A handwritten signature in black ink, appearing to read "David Folsom", is written over a horizontal line.

DAVID FOLSOM
UNITED STATES DISTRICT JUDGE